

Update on California and National Employment Law

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Today's Agenda

- **California Update**

- Update on Pending Legislation
- Update on Pending Regulations
- Recent Case Law Update
- Minimum Wage Increase

- **National Update**

- Legislation Update
- Recent Case Law Update
- IRS Mileage Rate Increase
- I-9 Rules for Remote Workers





California Update



Presentation Materials; For Informational Purposes Only

Pending Legislation



- First “return to normal” year for the legislature since start of COVID-19 pandemic.
- No disruption in legislative process or limits on bills (so far).
- Lots of non-COVID legislation in the labor/employment space.

AB 2188 - Cannabis



- Makes it unlawful to discriminate against a person for (1) use of cannabis off the job and away from the workplace, or (2) a positive test for “nonpsychoactive cannabis metabolites”.
- An employee cannot be “impaired” on the job.
- Does not apply to building or construction trades.
- Does not preempt state or federal laws (such as for federal contractors).

SB 1162 – Pay Data Reporting and Salary Information

- Requires pay data reports to be published on the DFEH website.
- Imposes civil penalties for not filing reports.
- Requires employers to report pay for employees hired through staffing agencies.
- **Requires employers to provide pay scale information in job postings.**





SB 1162 – Pay Data Reporting Provisions

- Expands upon SB 973 from 2020.
- **NEW!** Requires employers that have 100 or more employees hired through labor contractors to also report pay data on those employees.
- **NEW!** Expands pay data reporting to include median and mean hourly rate.
- **NEW!** Enacts civil penalties (\$100/\$200 per employee) for failure to report pay data.
- **NEW! Requires DFEH to publicly post pay data reports for employers with 250 or more employees.**



SB 1162 – Pay Scale Posting Provisions

- Requires employers to provide pay scale for position to current employees, upon request.
- Requires employers with **15 or more** employees to include the **pay scale for a position in any job posting**.
- Requires employers to maintain records of job titles and wage rate history for each employee for duration of employment plus three years.
- Civil penalty of \$1,000 to \$10,000 per violation.
- Contains language establishing a “right to cure” prior to a PAGA claim.

AB 1949 - Bereavement Leave



- Requires employers to provide up to 5 days of bereavement leave (completed within three months of death).
- In addition to CFRA leave, but part of Government Code rather than Labor Code (no PAGA).
- Unpaid but employee can use paid leave they have.
- Uses newly expanded CFRA definition of “family member.”

AB 2693 - COVID Exposure Notification



- Extends statutory COVID-19 exposure notification requirements (AB 685) to 2025 (set to expire at end of the year).
- This is in addition to similar Cal/OSHA ETS notice requirements.

AB 1751 - COVID-19 Workers' Compensation Presumption



- Extends the COVID-19 presumption created by SB 1159 to **January 1, 2025**.
- Applies when there is an “outbreak” of 4 or more cases (or 4% of workforce if over 100 employees) in a 14-day period.
- Any COVID-19 cases that occur during this outbreak period are *presumed* to be work-related and covered by workers’ compensation.
- Employers must report information on each COVID-19 case to their carrier.

SB 1044 - Emergencies: Retaliation



- Makes it unlawful for an employer to take adverse action against an employee where the employee refuses to work because the employee feels unsafe.
- Aimed at “states of emergencies” or “emergency conditions” but concern language is far too broad.

AB 257 – “Fast Food” Sector Council

- Creates an unelected Fast Food Sector Council.
- Gives them authority to determine wages and working conditions for the entire industry (even regionally).
- Applies to more restaurants than you might think.
- ***Troubling delegation of legislative authority? A sign of future efforts in other industries?***



AB 2448 - Harassment of Customers

- Aimed primarily at rising complaints of harassment of AAPI community by third parties.
- Requires posting of sign notifying customers of their rights and how to report harassment.
- Training requirement (at least one hour) for all employees who interact with the public by 2025.



AB 2777 – Reopens Statute of Limitations

- Enacts a one year “revival” of civil claims that had been barred by the statute of limitations – until end of 2023.
- Broad language applies to any “cover up” of claims arising out of “inappropriate conduct, communication or activity of a sexual nature.”
- This broad language may apply to sexual harassment claims that have lapsed.





Some Big Bills Not Moving

- **AB 1651 – Labor’s big “privacy” bill***
 - Workplace Technology Accountability Act – Would restrict the collection and use of worker data, would allow workers to bring a civil action for penalties against employers
- **AB 1993 – Employer vaccine mandate**
 - Would require an employer to require each employee or independent contractor, who is eligible to receive the COVID-19 vaccine, to show proof to the employer that the person has been vaccinated, would create exceptions for medical condition/disability
- **AB 2182 – Employment discrimination based on “familial responsibilities”**
 - Would prohibit discrimination on account of family responsibilities, or the “obligations of an employee or applicant to provide care for a minor child or care recipient”
- **AB 2932 – Four-day workweek**
 - Would require that work in excess of 32 hours in a workweek be compensated at 1.5x the employee’s regular rate of pay.
- **SB 1189 – Biometric information (like Illinois BIPA)**
 - Would require a private entity in possession of biometric information to develop a written policy establishing a retention schedule and guidelines for permanently destroying the information

****Stay Tuned! – Not the end of this story!***



Will CA COVID-19 SPSL Be Extended?

- Current law (SB 114) expires at the end of September.
- In theory, the legislature could extend or the Governor could do so through Executive Order.
- Have not seen any legislative proposals or efforts to do so – yet.
- May depend on where things stand with COVID-19 and new variants as we get close to the end of the legislative year (August/September).
- ***Keep an eye on this one!***

Pending Regulations – Cal/OSHA



- COVID-19 ETS in effect until end of the year.
- Likely will be a move to adopt a permanent standard on “infectious diseases” (not COVID-specific) thereafter.
- Draft language shared on expanding workplace violence prevention standard to all industries.
- Indoor heat standard still pending.

Pending Regulations - DFEH

- DFEH proposed regulations on the use of AI or “automated-decision systems” (ADS) in screening, hiring and other employment decisions.
- Such tools are subject to employment discrimination laws if they negatively impact employees and job applicants of protected classes.
- Follows a similar initiative at the EEOC.



Important Case Law Update



Naranja v. Spectrum Security Services (May 23, 2022)

- California Supreme Court says premiums for missed meal/rest period are “wages” rather than “penalties.”
- Has potential implications for paystubs (LC 226) and waiting time penalties (LC 203).

Important Case Law Update

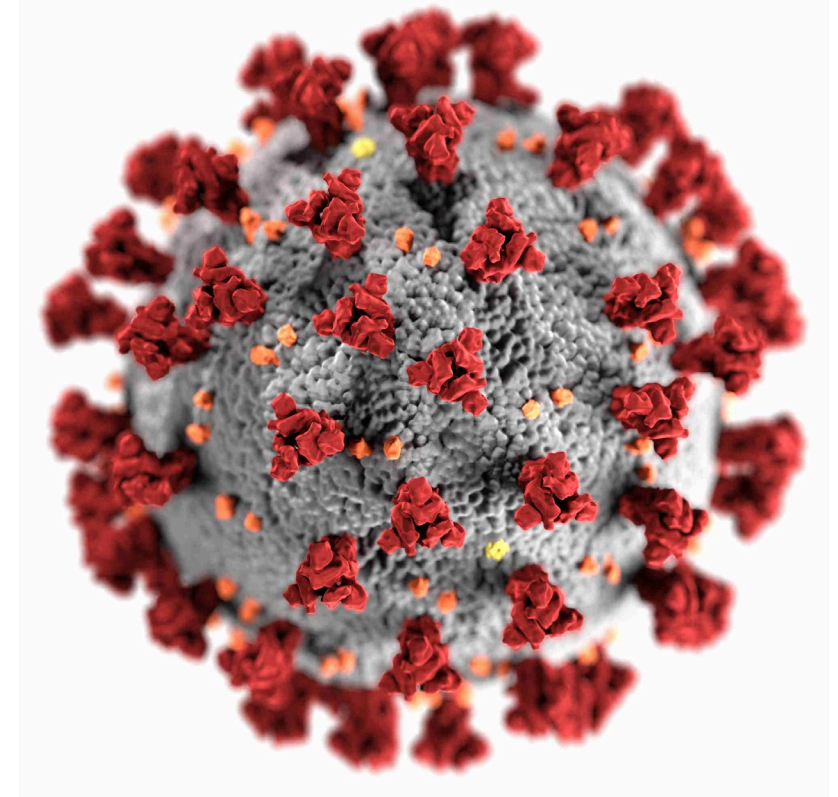
Viking River Cruises

- SCOTUS decided June 29, 2022.
- Individual PAGA claims can be compelled to arbitration.
- Plaintiffs then lose standing to bring representative PAGA cases.
- But left the door wide open for CA courts or the legislature to “fix.”
- Good victory but could be short-lived.



Important Case Law Update

- ***Kuciemba v. Victory Woodworks* (9th Cir. 2022)**
 - Certified the following questions to the California Supreme Court:
 - (1) May an employer be held liable to an employee's spouse when an employee contracts COVID-19 in the workplace and then infects their spouse at home?
 - (2) Does an employer have a duty of care to its employees' households to prevent the spread of COVID-19?
 - Stay tuned for developments!





State Minimum Wage Increase?

- Statute enacting the state minimum wage says if inflation increases by more than **7%** - minimum wage increases.
- In May, California Department of Finance predicted that inflation will hit **7.6%** for 2022 fiscal year. **Will be official at end of June but looking pretty likely at this point.**
- Therefore, Governor announced minimum wage will increase to **\$15.50** per hour January 1, 2023.
- And this will apply to all employers **regardless of size** (no longer distinction for those with less than 25 employees).
- Keep local minimum wages in mind.
- “Domino effect” on minimum salary for exempt employees - **\$64,480.**

Local Minimum Wage Increase

- Minimum wage hikes are going into effect in several cities across California on **July 1, 2022**. Southern California cities affected include:
 - Long Beach - \$16.73/hour (hotel worker); \$16.55/hour (concessionaire worker)
 - Los Angeles - \$16.04/hour; \$18.17/hour (hotel workers); \$25.00/hour (effective August 13, 2022 for covered healthcare workers)
 - Malibu - \$15.96/hour
 - Pasadena - \$16.11/hour
 - Santa Monica - \$15.96; \$18.53 (hotel workers)
 - West Hollywood - \$16.50 (50 or more employees); \$16.00 (49 or fewer employees); \$17.64 (hotel workers)
 - *Los Angeles County - \$15.96

National Update



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Legislation Update

- **H.R. 4445 – Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act**
 - Passed on February 10.
 - Amended the Federal Arbitration Act and prohibits employers for unilaterally enforcing arbitration agreements for disputes involving sexual harassment or sexual assault.
 - All employees subject to arbitration agreements have the right to unilaterally choose to bring covered claims in arbitration or court.
- **Senate Bill 4356 – Responsible Financial Innovation Act**
 - Introduced in the Senate on June 7, seeks to provide a comprehensive regulatory framework for cryptocurrency in the United States
 - Bill is not expected to pass, but it could prompt an extensive legislative process that will likely extend into the next year.
 - Could help bring clarity for widespread acceptance of cryptocurrency and mainstream use by the employer community.

Important Case Law Update

- ***Dobbs v. Jackson Women's Health Organization (June 24, 2022)***
 - Overturned *Roe v. Wade*, the authority to regulate abortion is returned to the people and their elected representatives (i.e., the states).
 - How does this ruling effect employers?
 - Abortion will remain legal in California.
 - However, companies with employees located in various states must be mindful of the changing legal landscape as many states are set to enact abortion limitations.
 - Employers should understand the workplace protections employees have under existing federal anti-discrimination laws and how they apply to an employee's decision whether to have an abortion.
 - Many employers have announced that they will provide travel benefits to employees and family members who live in states where abortion is outlawed or severely curtailed. Providing travel benefits outside of a group health plan raises tax, Affordable Care Act, and ERISA compliance issues. Employers should consult with employee benefits counsel.
 - If an employee needs time off to travel to another state for abortion-related care, job protected leave may be available. Employers must consider the Pregnancy Discrimination Act, Americans with Disabilities Act, and Family and Medical Leave Act.

IRS Mileage Rate Increase

- In response to record-high gas prices, the IRS announced that July through December 2022, the optional standard mileage rate for business travel will increase from 58.5 cents to **62.5 cents per mile.**
- If your business opts to reimburse employees for their use of personal vehicles for business purposes, you should account for the rate increase **beginning July 1, 2022.**



I-9 Rules for Remote Workers

- U.S. Immigration and Customs Enforcement recently announced that it will permit **remote review** of new hires' I-9 documentation for those who work exclusively in a remote setting due to COVID-19 related precautions through **October 31**.
- This signals that ICE may be considering the establishment of permanent rules that would allow employers to regularly conduct remote document review for employees hired to work in locales that are hundreds or thousands of miles away from the employer's nearest physical location.
- Employers should:
 - Document the specific reasons why an in-person inspection of an employee's documents is not possible using the "Additional Information" section on the Form I-9 or by attaching a separate memorandum to the Form I-9.
 - If a remote employee ceases remote work and begins to report to the business's physical location on a regular, consistent, or predictable basis, you must physically inspect acceptable I-9 documentation and record the specifics of the in-person review.



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Questions?

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Thank You!

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